

Submission on the *Draft Native Vegetation Regulation 2004*

Introduction

The *Draft Native Vegetation Regulation 2004* (the *Regulation*) provides much of the detail for the regime outlined in the *Native Vegetation Act 2003* (the *NV Act 2003*). The *Regulation* was released for comment in early November 2004.

These comments relate to the *Regulation*, the *Draft Environmental Outcomes Assessment Methodology* (the *EOAM*), the trials of the Property Vegetation Planning Process and the Fact Sheets and associated information released as part of the introduction of the *NV Act 2003*.

Southern Rivers Catchment Management Authority (SRCMA) believes that these comments will strengthen the *Regulation* and facilitate the effective implementation by the CMA of the *NV Act 2003* in 2005.

Comments

Regulation

Part 2 Development consent for clearing

Part 2 Clause 5 Conditions of development consent

SRCMA requires clarification on the interaction between the *Regulation* and the *Environmental Planning and Assessment Act 1979* (*EP&A Act 1979*).

SRCMA recommends that there is no requirement for landholders to obtain dual consent.

Part 3 Clause 8 Content of PVPs

(b) specify the period for which the PVP has effect,

SRCMA recognises that there continues to be uncertainty among landholders about the duration of a PVP. It is understood that the PVP for clearing is 15 years but other aspects of a PVP (eg. offsets or incentives) could be for longer periods – possibly in perpetuity.

SRCMA recommends that this point be clarified in the regulations.

(d) include a rectified satellite or aerial photograph (indicating the date that the photograph was taken), or (if such a photograph is not available) a topographical map,

SRCMA recommends that in the absence of SPOT 5 imagery for the whole state, and to allow for future technological improvements (eg the broader application of a Digital Elevation Model) that this clause be rewritten to provide for the use of the most appropriate rectified image.

(ii) any land for which the PVP specifies a date for the purposes of the definition of *regrowth* in the Act,

The definition of regrowth is unclear in this clause. SRCMA recommends the further clarification regarding the definition of regrowth in this clause.

- (f) details of any proposals (including management actions or works) provided for by the PVP for which financial incentives have been or are provided, and**
- (g) details of any natural resource management actions that are required by the PVP and the period for which they are required to be carried out, and**
- (h) details of the extent (if any) to which provisions of the PVP exclude clearing for routine agricultural management or other activities from being permitted clearing.**

SRCMA recommends clarification on whether or not the management actions and works outlined in this clause only relate to native vegetation.

- (g) details of any natural resource management actions that are required by the PVP and the period for which they are required to be carried out,**

SRCMA recommends clarification as to whether or not the on ground management actions required by the PVP have jurisdiction over controlling or specifying land use.

Part 3 Property vegetation plans

Part 3 Clause 9 PVPs that change regrowth date

SRCMA recommends that DIPNR resolve the onus of proof issue and develop definitive guidelines for the proving of 'rotational farming practices'.

SRCMA recommends that DIPNR provide a clearing history map for NSW.

Part 3 Clause 10 Termination of PVP

SRCMA recommends changing 'at least 14 days' to '30 days' to ensure consistency within the *Regulation* and put some clear time lines on the process.

Part 3 Clause 11 Register of PVPs

SRCMA recommends that PVPs be linked to the Section 149 certificate ordinarily undertaken by council, this would allow a bona fide prospective purchaser to obtain details of a PVP over the land. This would require a legislative change to the *EP&A Act 1979*. The logical inclusion of the existence of a PVP on the 149 Certificate leads to consideration of the ability of Local Government to access this register via the Internet or other forms of electronic access with appropriate safeguards. The resources available to both the CMAs and Local Council regarding this implementation needs to be given consideration.

SRCMA also identifies a need for a public register with restricted detail to be available. For example the public register could include name of the applicant, property details and what type of PVP was present on the land.

Part 4 Routine agricultural management activities

Part 4 Clause 13 Control of pest animals

SRCMA recommends that the phrase 'Anything pursuant to an obligation...' be altered to 'The minimum extent necessary pursuant to an obligation...'

Part 4 Clause 14 Gardens

SRCMA recommends that the term 'garden' be further clarified in the *Regulation*.

Part 4 Clause 16 Infrastructure buffer distances

(1) Clearing for an activity comprising the construction, operation or maintenance of any of the following rural infrastructure

SRCMA recommends that DIPNR provide greater legal clarification on the word ‘construction’ as it could have potential ramifications for compliance across NSW. The word ‘construction’ can be interpreted to mean clearing of any amount of native vegetation to actually get building materials for rural infrastructure, regardless of where the rural infrastructure is to be located.

SRCMA also recommends that DIPNR negotiate a solution to this grey area in the *Regulation*.

Part 4 Clause 16 Infrastructure buffer distances

1 (b) for holdings that are not small holdings and not in the Western Division

SRCMA recognises that this will require community consultation within the CMA and is not prepared to make any recommendations without undergoing this consultative process. SRCMA recognises that this consultative process should be exhaustive and believes that the current February 2005 timeframe is inappropriate.

SRCMA recommends that DIPNR facilitate a process to ensure consistency across CMAs, particularly for landholders whose properties span CMA boundaries.

Part 5 Broadscale clearing

Part 5 Clause 18 Adoption of Minister’s Assessment Methodology

SRCMA recommends that *EOAM* not be gazetted prematurely. SRCMA believes that the *EOAM* is not yet rigorous enough to allow gazettal, as discussed in the Assessment Methodology section of this document.

Part 6 Special provisions for vulnerable land

Part 6 Clause 22 Former Act not to apply to State protected land

(2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to:

SRCMA strongly recommends the rapid development of State Protected Land regulations for the *NV Act* by DIPNR.

SRCMA recommends that DIPNR develop digital layers of the gazetted Category A State Protected Land to be used in conjunction with the PVP Developer.

Part 6 Clause 23 Identification of protected regrowth on steep or highly erodible land or protected riparian land

(1) The Minister may prepare a natural resource management plan

SRCMA recommends that this clause be changed from ‘may’ to ‘will’.

SRCMA also requires clarification on the process for preparing the natural resource management plan, such as who is to prepare the plan, what is the public consultation process and why are the CMAs not

specifically involved? The SRCMA recommends that the CMAs should have a key role in the development of these natural resource management plans.

Part 8 General

Part 8 Clause 33 Clearing of groundcover-calculations

The requirement to obtain consent to clear groundcover depends on a regulated field inspection method which is described in the *Regulation* to ascertain if the groundcover is greater than 50% native. SRCMA does not believe that this inspection method is appropriate as it is strongly influenced by seasonality and grazing regimes in the area. There is also ambiguity in how to record layered groundcover vegetation at a single point.

SRCMA recommends that the method include a species requirement rather than the native/non native distinction.

SRCMA would also recommend demonstrable evidence, such as photographic proof or an accredited person undertaking the groundcover assessment.

SRCMA also challenges the option of self-assessment as this may lead to individuals acting in good faith open to future prosecution.

Part 8 Clause 35 Extension of Act to Wollongong local government area

SRCMA supports the amendment of Schedule 1 to the Act with the omission of 'Wollongong' from clause 13.

General

Intent of PVP Developer

SRCMA believes that there should be no expectation that the PVP Developer can become a decision – maker in its own right. The developer does not have the inherent capacity to synthesise the full and complex range of issues that is required when making balanced, holistic planning decisions at a landscape scale. There is some concern that practitioners may come to use the developer as the decision-maker rather than using it as a tool to aid their judgement and to justify and compare decisions.

Socio-economic considerations

SRCMA notes the complete exclusion of socio-economic considerations from the *NV Act* and the *Regulation*.

SRCMA requires a process and resources to develop landscape strategies that can be incorporated into the decision making of the PVP Developer tool, particularly the inclusion of social and economic factors.

Aboriginal and cultural heritage considerations

SRCMA notes the complete exclusion of Aboriginal and cultural heritage considerations from the *NV Act* and the *Regulation*. SRCMA notes that this creates a parallel process as landholders have a legal requirement regarding Aboriginal and cultural heritage.

SRCMA refers the matter back to State Government for resolution.

External certification

SRCMA recommends that there be no external certification for PVP assessment, this is for a number of reasons, particularly in regard to incentives. It would not be appropriate for externally certified persons to be able to distribute incentive funds to landholders. SRCMA recommends that CMA staff undertake all PVPs.

Review of ‘red light’ PVPs

SRCMA recommends the development of a statewide, transparent and robust process for the review of red light PVPs by CMAs.

Inconsistencies between other NRM legislation and the *Regulation*

SRCMA requires clarification on the interaction and inconsistencies between the *Regulation* and other legislative instruments such as the *EP&A Act 1979*, Bushfire Management Plans and the *Plantations and Reafforestation Act 1999*.

SRCMA recommends that there should be no requirement for landholders to obtain dual consent.

Areas that have previously received public funds for management

Landholders who have previously received public funds in the management of areas of land for conservation are unable to use these areas as an offset. This provides a disincentive for landholders to undertake publicly funded environmental management projects on their land.

SRCMA recommends that:

- there is recognition of landholder contributions to the management of these publicly funded areas.
- these areas as a whole should be able to be used as an offset after a period of 10 years has lapsed.
- possible pro rata system is available to landholders until the 10-year period has lapsed.

Grasslands

SRCMA identifies these areas as being inadequately assessed under the *Regulation* in its current state. SRCMA recommends that a separate regulation is developed for the assessment of native grasslands and a working group is formed between CMAs that have widely occurring native grasslands within their catchments.

Land excluded from the Act

The exemption of land, such as SEPP 14 wetlands from the NV Act, even as offset areas for clearing is viewed by the SRCMA as unreasonable. SRCMA recommends that this land be incorporated into the *Regulation* so that it can be used as an offset or for incentives.

Training

SRCMA identifies the training of PVP staff as a very important issue in the successful implementation of the PVP process throughout the State.

Assessment Methodology

Water Quality Assessment

The current automatically assigned buffer distances within the water quality tool in PVP Developer are inconsistent with regional direction and other legislative instruments.

SRCMA recognises that a review of the Water Quality buffers will require community consultation within the CMA and is not prepared to make any recommendations without undergoing this consultative process.

SRCMA recommends that DIPNR facilitate a process to ensure consistency across CMAs, particularly for landholders whose properties span CMA boundaries. A review is also required to ensure consistency and compatibility between the NV Act and existing instruments, such as the *Plantations and Reafforestation Act 1999*.

The mapping software can not property map riparian buffer zones as there is no consideration given to variable stream width.

SRCMA recommends that further consideration be given to the mapping of riparian buffers.

The area of the polygons of the buffer zones created around watercourses in the mapping program is not deducted from the area of the clearing polygon.

SRCMA recommends that this be rectified within the mapping program.

Water quality assessment process is inadequate for Southern Rivers catchments and especially in light of the high value placed on water quality protection. The water quality tool appears inconsistent with Best Management Practice for water quality as there are no management options such as the maintenance of ground cover values, especially in low order streams.

Biodiversity Assessment (including Threatened Species)

- SRCMA identifies that the Biometric tool in PVP Developer gives false values for communities that naturally have strata missing, such as Native Grasslands or Grassy Woodlands. SRCMA recommends that the benchmarks within Biometric Tool be adjusted so that communities that naturally have strata absent can have null values entered.
- The SRCMA has identified that when selecting a Vegetation Type in the BioMetric tool that the types have been incorrectly assigned to Vegetation Formations. SRCMA recommends that DEC resolve these discrepancies. There are also discrepancies between the list of Vegetation Types available in the BioMetric tool and the list available in the Threatened Species tool. SRCMA recommends that DEC resolve these differences between the tools so that the same lists of Vegetation Types are used for assessment.
- SRCMA identifies that scattered trees within a landscape are a modified density compared to a natural density. However in fragmented or extensively cleared landscapes these scattered trees are often the only remaining native vegetation. SRCMA recommends that the BioMetric tool be adjusted so that modified communities in fragmented landscapes are appropriately assessed.
- Within the BioMetric tool, the heavy weighting of two features present - within the area to be cleared, trees with hollows and native plant species richness - these two values contribute to approximately 70% of the final score for biodiversity. SRCMA recommends that the weighting of these values is adjusted so that appropriate land management outcomes are achieved.

- The landscape context setting within Biometric Tool of PVP Developer currently permits clearing of a large area of land, if a small area of land (10 ha) is completely rehabilitated in a fragmented landscape. Conversely in a landscape that is relatively intact enormous offsets are required even for small areas of clearing.
SRCMA recommends that philosophy of 'improve or maintain' is revisited as the tool currently rewards poor previous land management. SRCMA recommends that DEC adjusts settings within the tool. SRCMA suggests that this could be achieved through the addition of another category in the calculation of Landscape Context – so that the percentage cleared of the vegetation type within the sub catchment of the proposal is used as a tool to assist in the calculation of Landscape Context.
- The SRCMA identifies that the Threatened Species tool in PVP Developer requires a very specific community to be identified before species lists can be created. This limits staff prior to fieldwork and could prevent the identification of threatened flora in the field.
SRCMA recommends that the settings to structural formation class (for example, change to Grassy Woodland, Shrubby Woodland) rather than generating information based on vegetation type.
- SRCMA identifies that the list of Threatened Species that could potentially occur on the site dramatically under predicts the species that could occur.
SRCMA recommends that more time be spent by DEC on the development and refinement of the Threatened Species tool. SRCMA also recommends that the DIPNR regional ecologist position be retained in each of the DIPNR regions to provide ecological support and advice regarding threatened species. SRCMA recommends discussion between DEC and DIPNR regarding the TATS tool that is currently maintained by DIPNR for predicting threatened species. SRCMA requires a better balance in the TS tool that places threatened species management in a landscape context.
- SRCMA recommends that further detail be provided regarding threatened flora surveys, there have been no minimum requirements in the assessment methodology for the survey methods to be applied for threatened flora species. SRCMA also identifies the suspension of the PVP process due to the need to wait for appropriate flowering times for threatened flora species as unreasonable.
- SRCMA considers the survey requirements for the BioMetric tool to be extreme, with recommended survey intensity being 1 quadrat per 2 hectares of homogeneous Vegetation Type. SRCMA recommends that the minimum survey requirements be increased.
- SRCMA considers the assessment methodology pertaining to the assessment of scattered paddock trees in cultivation to be subject to bias. In vegetation communities that are naturally wide spaced, (in particular Endangered Ecological Communities) scattered paddock trees continue to fall into the current definition of NOT highly modified within the BioMetric tool of PVP Developer (if there is an island of native vegetation occurring at the base of the tree within a cropping paddock). SRCMA recommends that the definition of 'highly modified' within BioMetric and the Threatened Species tool in regard to EECs be reconsidered.
- SRCMA identifies that the Vegetation Types list generated for Southern Rivers requires further refinement. Benchmark data for each Vegetation Type is also a key requirement for the successful operation of the BioMetric tool. SRCMA recommends that the Vegetation Types within BioMetric are further refined and appropriate data collated for each by DEC.

Land Degradation (Soils) Assessment

- SRCMA identifies that the proposed method of removal of vegetation is not taken into account in the Land Degradation assessment. This is of particular importance for clearing using hand methods on shallow soils.
SRCMA recommends that the settings within the Land and Soil Conservation (LSC Tool) within PVP Developer be refined to include the ‘method of removal’ into the calculation of land capability.
- The map for assessing wind erosion hazard in PVP Developer is at an unreasonable scale, with very few reference points present on the map.
SRCMA recommends that the map be refined to a more appropriate scale and should also be digitised and be available as a layer on the PVP Mapper.
- When mapping zones within the mapping program such as Land and Soil Conservation zones, the mapping is done ‘by eye’ against an aerial photograph or satellite image. Regional information layers are available which could assist in increased accuracy, such as 1:25 000 land use mapping or 1:100 000 soil landscape mapping.
SRCMA recommends that this regional information be able to be included into the mapping tool.
- Suggested management options for Amber Light responses are not appropriate for sustainable environmental or economic outcomes. For example, the LSC tool recommends the application of fertiliser and pasture improvement. This recommendation falls into the category of ‘broadscale clearing’ and in many instances would not be considered environmentally appropriate for areas containing threatened flora species. The tool also recommends that pasture improvement be undertaken using direct drill methods. In many instances this would involve the purchase of equipment for landholders.
SRCMA recommends that the differences between the management options of the tools within PVP Developer be resolved. SRCMA also recommends the development of CMA specific standard conditions, accompanied by policy and decision support guidelines for PVP officers.

Mapping Program within PVP Developer

The current assessment methodology requires the mapping of property boundaries to be done ‘by eye’ against an aerial photograph or satellite image. This is a serious legal issue that could result in the inclusion of land not owned by the PVP applicant.
SRCMA recommends that the mapping of the PVP boundary be done to cadastre.